

Appeal from decision of Eastern States Office, Bureau of Land Management, denying petition for refund of filing fees in noncompetitive oil and gas lease filing. ES 28879 et al.

Affirmed.

1. Accounts: Refunds -- Oil and Gas Leases: Applications: Filing

An offeror for a noncompetitive oil and gas lease, filing over-the-counter, is not entitled to a refund of the filing fee even though she withdraws the offer prior to issuance of the lease.

APPEARANCES: Marie W. Suto, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Marie W. Suto has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated May 21, 1982, denying her petition for a refund of the filing fees submitted with four noncompetitive oil and gas lease offers, ES 28879, ES 28886, ES 28931, and ES 28932.

On August 28, 1981, appellant submitted 11 noncompetitive oil and gas lease offers for acquired land situated in Arkansas, pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 351 (1976). 1/ Along with the lease offers, appellant submitted the respective \$10 filing fees, in accordance with 43 CFR 3103.2-1(a) (1980).

On September 30, 1981, appellant submitted a letter requesting withdrawal of her oil and gas lease offers and return of the rental payments and filing fees. On December 17, 1981, after receiving partial refund of

1/ Appellant's petition and statement of reasons refers to 11 oil and gas lease offers, the Board's decision herein, however, applies only to the four applications which were the subject of the May 1982 BLM decision. Accordingly, as to the remaining seven offers, appellant's petition for a refund remains outstanding.

the rental payment, appellant again requested the return of her filing fees. She claims that she is entitled to a refund of the filing fees because a July 20, 1981, notice in the Federal Register erroneously led her to believe that oil and gas lease offers filed for certain acquired military lands would be treated as simultaneously filed and that priority among conflicting offers would be determined by a public drawing, when that was not the case.

In its May 1982 decision, BLM denied appellant's petition for a refund, concluding that even though appellant had withdrawn her oil and gas lease offers, she was not entitled to a refund of the filing fees. BLM cited 43 CFR 3103.2-1(a) which provides in relevant part: "Each fee shall be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part." In her statement of reasons for appeal, appellant states:

Despite the clearly worded procedures revealed in the press release, I have learned from subsequent discussions with the BLM office that the person or company making the initial application for a conflicting parcel will have priority and will be awarded the lease without participation in the drawing. This policy does not seem equitable. However, ignoring this point, I contend that the procedures made public clearly did not define the rules that would actually be used for awarding the parcels. Nowhere did the press release or the Federal Register article state that the initial applicant would be given priority over all others for conflicting parcels. Consequently, my applications, all in conflict with earlier original filings, stood no chance of success.

* * * * *

Because of the deceptive information regarding this filing, I contend that I am entitled to a full refund of the \$110 in filing fees which I submitted.

On July 20, 1981, the Department published in the Federal Register a notice lifting the moratorium on the issuance of noncompetitive oil and gas leases "for the approximately 6.6 million acres of Federal land acquired for military or naval purposes." 46 FR 37250 (July 20, 1981). The notice further provided that over-the-counter oil and gas lease applications would be accepted from August 10 to 28, 1981, and "considered as simultaneously filed as of the close of business on August 28, 1981." Id. Moreover, the notice stated that "[p]riority, to the extent of conflicts between offers, shall be determined by public drawings." Id.

Statements made by appellant indicate that the land applied for in her four noncompetitive oil and gas lease offers is not acquired military land, and thus, not subject to the filing procedure enunciated in the July 20, 1981, Federal Register notice. In an attachment to her September 1981 letter, she states with respect to the four offers: "Title Report shows Forest Service jurisdiction and not military by check of conflict application file by Ruckstuhl on 9/18/81." (Emphasis in original.)

In the letter itself, appellant explains that:

I filed for these parcels based on a BLM press release that implied the special package of descriptions of military lands was for the available parcels. When I found this not to be the case, there was no time to research the parcels properly, and I filed for the attached parcels which turned out to be under Forest Service jurisdiction. [Emphasis added.]

These statements indicate that appellant realized her error, in that the lands described in her offer were not acquired military land, as she had assumed. While, appellant states that her assumption was generated by a "BLM press release" clearly this is not the case. The July 21, 1981, press release, for the most part, closely follows the July 20, 1981, Federal Register notice. The document indicates the procedure for filing oil and gas lease applications for acquired military lands, but no description of lands is provided. Accordingly, the responsibility was on the offeror to determine which lands were subject to the notice, and to describe them correctly. Appellant did not, and, we conclude that she was not misled by BLM into believing that the land was subject to the special filing procedure enunciated in the press release and the Federal Register notice. Appellant's oil and gas lease offers were subject to the standard filing procedure for over-the-counter offers, with priority among conflicting offers dependent on the time of filing.

In any case, appellant is not entitled to a refund of her filing fees. The applicable regulation, 43 CFR 3103.2-1(a), clearly provides for retention of filing fees even though an application or offer is rejected or withdrawn. We have concluded that this is proper procedure where the filing fee serves as a service charge for the processing of oil and gas lease applications or offers. Robert C. Meredith, 44 IBLA 213 (1979). Accordingly, BLM properly denied appellant's petition for a refund of her filing fees.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

